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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

MAY - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Implementation of the)	CC Docket No. 96-115
Telecommunications Act of 1996:)	
)	
Telecommunications Carrier's Use)	
of Customer Proprietary Network)	
Information and Other)	
Customer Information)	
_____)	

COMMENTS OF THE
UNITED STATES TELEPHONE ASSOCIATION

The United States Telephone Association (USTA),¹ through the undersigned and pursuant to the Public Notice² released by the Federal Communications Commission (Commission) in the above-captioned proceeding, hereby files comments concerning the Request for Deferral and Clarification (Request) of the Cellular Telecommunications Industry Association (CTIA)³ and the Petition for Temporary Forbearance or, In the Alternative, Motion for Stay (Petition) of GTE Service Corporation, and its affiliated domestic telecommunications, wireless, and long distance

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA currently represents more than 1200 small, mid-size and large companies worldwide.

² Public Notice, CC Docket No. 96-115, DA 98-836 (rel. May 1, 1998).

³ The Request was filed with the Commission on April 24, 1998.

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companies (GTE).⁴ As discussed below, USTA supports the GTE Petition and asks the Commission to grant the relief requested therein. USTA gives its qualified support to CTIA's Request. USTA believes that the Request is meritorious, but if granted as presented, would be too limited in its applicability. The Request should be granted, but its scope should be expanded to include all telecommunications carriers.

DISCUSSION

The Petition and the Request are somewhat overlapping in the relief that they seek, although the Petition does not limit itself to relief for wireless carriers. Read together, they demonstrate the industry-wide impacts that the Commission's Second Report and Order⁵ will have on the provision of telecommunications services, information services and customer premises equipment (CPE) by telecommunications carriers. Whether one views the changes required by the Second Report and Order from the perspective of the few wireline telecommunications carriers that currently operate with certain customer proprietary network information (CPNI) restrictions⁶ or the great preponderance of telecommunications carriers, both wireline and wireless, that have never operated with CPNI restrictions, it is exceedingly clear that the Commission's new CPNI rules force dramatic changes in the way that carriers can market

⁴ The Petition was filed with the Commission on April 29, 1998.

⁵ Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, FCC 98-27 (rel. Feb. 26, 1998) (Second Report and Order).

⁶ The former Bell Operating Companies (BOCs), GTE and AT&T currently operate with certain CPNI restrictions.

telecommunications services, information services and CPE to their customers. The impacts of the new CPNI rules on all telecommunications carriers will be substantial and the impacts on their customers will be greater still. Because of the customer confusion, disruption and dislocation that is certain to follow implementation of the new rules as presently adopted, it is crucial that the Commission allow for a revisiting of those rules identified in the GTE Petition and CTIA request before they take effect. The Commission may grant temporary relief through the exercise of its Section 10⁷ forbearance powers or by granting a stay of the Second Report and Order.

**I. CTIA's Request Should Be Granted, But Its Scope
Expanded To Include All Telecommunications Carriers**

The CTIA Request asks that the Commission “defer for 180 days the effective date of new Sections 64.2005(b)(1) and (b)(3) of the rules governing the use of CPNI, insofar as they apply to the provision of commercial mobile radio services (“CMRS”).”⁸ CTIA also asks for clarification concerning the two rules. Specifically, CTIA asks the Commission to “confirm that CPNI refers only to information about the type and amount of service customers purchase, not the names and addresses of customers themselves” and to “clarify that the new ‘win-back’ rule would not apply until after a customer is no longer receiving service from its original carrier.”⁹

CTIA's filing focuses on two aspects of the Second Report and Order that will certainly

⁷ 47 U.S.C. § 160.

⁸ Request at p. 1.

⁹ Id. at pp. 4 and 5.

be addressed in numerous petitions for reconsideration or on appeal: the prohibition against the use of CPNI to market CPE absent affirmative customer consent; and the prohibition against the use of CPNI for customer retention purposes.¹⁰ Serious questions exist as to whether these prohibitions are required by Section 222 and whether the way that the Commission has addressed them in the Second Report and Order is in the best interest of customers. These prohibitions will have profound impacts on telecommunications carriers, those that previously were not constrained by CPNI rules in their communications with customers and those that have operated under different CPNI rules.¹¹ USTA agrees with CTIA that the public interest requires the deferral of the effective date (currently May 26, 1998) for sections (b)(1) and (b)(3) of Commission Rule 64.2005 for at least 180 days in order to allow for the supplementation of the record as to these sections in anticipation of petitions for reconsideration or forbearance. USTA also believes, though, that the CTIA Request should be broadened to include all telecommunications carriers.

There are equally compelling reasons to extend the CTIA Request to other telecommunications carriers. Just as CMRS providers have not heretofore been restricted in their use of CPNI, more than 1000 of USTA's local exchange carrier (LEC) members have also not previously been restricted in their use of CPNI. The disruption and confusion for the customers of these local exchange carriers will be as significant as it will be for the customers of CMRS

¹⁰ Both rules are addressed by the GTE Petition.

¹¹ Such as the former BOCs, GTE and AT&T who, until the effective date of the new CPNI rules, operate under *Computer III* CPNI rules. As to the use of CPNI for marketing CPE, the *Computer III* CPNI rules are less restrictive than the Commission's new CPNI rules in both substance and scope.

providers. There will also be significant disruption and confusion created for the customers of the former BOCs and GTE as their customers, who have become accustomed to the *Computer III* CPNI protocols, will now have to be familiarized with the new CPNI protocols. At the very least, they will wonder why they are going through another CPNI notification process and why their telecommunications carrier can no longer communicate with them as it once could.

With respect to CTIA's proposal for clarification concerning the win back prohibition, USTA believes that the CTIA proposal is supportable as an alternative, applicable to all telecommunications carriers, should the Commission deny GTE's request for a stay of the win back provisions. The win back prohibition is clearly not required by Section 222 of the Communications Act¹² and a stay pending further consideration is the most appropriate course.

As requested by CTIA, the Commission should clarify the definition of CPNI and confirm that a customer's name and address alone do not comprise CPNI.

II. GTE's Petition Should Be Granted

GTE's Petition is similar to, although broader than, the CTIA Request with respect to the relief that it seeks. GTE asks the Commission to temporarily forbear from applying Section 222 of the Communications Act or to stay the Second Report and Order with respect to the following:

Section 222(c)(1) of the Act and section 64.2005(b)(1) of the Rules to the extent that they prohibit use of CPNI to market CPE that is packaged with a wireless or advanced telecommunications service, or to market voice mail or other store-and-forward message services, including wireless short message service, used to enhance a telecommunications service.

Section 222(c)(1) of the Act and section 64.2005(b) of the Rules to the extent that they prohibit a carrier from using CPNI derived from a packaged service offering

¹²47 U.S.C. § 222.

that includes two service categories to market an expanded package that includes all these and other services on a packaged basis.

Section 222(c)(1) of the Act and section 64.2005(b)(3) of the Rules to the extent they prohibit a carrier from using CPNI to retain a customer or win back a lost customer.¹³

USTA agrees with GTE that these three points will cause immediate harm to consumers, carriers and the public interest if allowed to take effect as scheduled.¹⁴ For that reason, USTA supports GTE's Petition.

USTA urges the Commission, though, to not limit the temporary forbearance or stay just to CPNI used to market CPE that is bundled with a wireless or advanced telecommunications service. The temporary forbearance or stay should include CPNI used to market CPE in conjunction with any telecommunications service. The status quo should be maintained until a more complete record can be developed on the question of whether Section 222 of the Communications Act requires different treatment for the use of CPNI in conjunction with the provision of CPE than when it is used in conjunction with the provision of inside wire installation, maintenance and repair service. If the ultimate conclusion is that Section 222 does require that they be treated differently, USTA believes that CPE would be a prime candidate for forbearance with respect to the ability to use CPNI to market it.

¹³Petition at pp. 2 and 3.


¹⁴Id. at p. 3.

CONCLUSION

USTA requests that the Commission grant the relief requested in the GTE Petition, expanding any forbearance or stay to include permitting, in the interim, the use of CPNI to market CPE in conjunction with any telecommunications service. USTA gives its qualified support to the CTIA Request which, when broadened to include wireline providers, is consistent with GTE's Petition.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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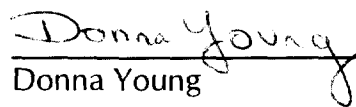
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May 8, 1998

CERTIFICATE OF SERVICE

I, Donna Young, do certify that on May 8, 1998, copies of the accompanying comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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